*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.20951 of 1999 (and batch)

%12.10.2004

£ 1 G. Saibaba s/o Sri Thayanna, C/o Sri Saibaba General Stores,

Opp: Old Bus Stand, Gadwal, Mahabubnagar District.
2 G. Pratap Reddy s/o. Bal Reddy, Sub. Assistant, O/o Soil Conservation

(Agrl. Dept.) Gadwal, Mahabubnagar District.
3 K. Subbaiah s/o Venkataiah, r/o Eedigonipalle village, Gadwal Mandal,

Mahabubnagar District.
4 P. Narasimhulu s/o Kistaiah, APSEB, r/o. Gadwal,

Mahabubnagar District.

..... PETITIONERS

AND

$ 1 The Commissioner Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.
3 The Director, Directorate of Town & Country Planning Govt. of A.P.,

Secretariat, Hyderabad.
R3 is impleaded as per Court order dt.13/3/2000 in WPMP 3199/2000.

.....RESPONDENTS

!For the petitioner … Mr. J. Prabhakar

^For the Respondent 1 … Mr. R. Thimma Reddy

For the Respondents 2 and 3 …G.P. for Municipal Administration

And Urban Development

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1997 SC 1732 (Paras 4 and 5)

*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.22933 of 1999 (and batch)

%12.10.2004

£ Smt. U. Sailaja, W/o Srinivasa Rao, r/o MIG 36,

Housing Board, Gadwal Post, Mahabubnagar District.

..... PETITIONER

AND

$ 1 The Commissioner Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.

.....RESPONDENTS

!For the petitioner … Mrs. Janaswamy Surya Kumari

^For the Respondent 1 … Mr. R. Thimma Reddy

For the Respondent 2 …G.P. for Municipal Administration

And Urban Development

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1997 SC 1732 (Paras 4 and 5)

*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.23679 of 1999 (and batch)

%12.10.2004

£ Smt. Venkata Narasamma, W/o M. Hussainappa,

r/o Chintalpet, Near SC Hotels, Gadwal,Mahabubnagar District.

..... PETITIONER

AND

$ 1 The Commissioner Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.

.....RESPONDENTS

!For the petitioner … Mr. J. Prabhakar

^For the Respondent 1 … Mr. R. Thimma Reddy

For the Respondent 2 …G.P. for Municipal Administration

And Urban Development

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1997 SC 1732 (Paras 4 and 5)

*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.24583 of 1999 (and batch)

%12.10.2004

£ Smt. K. Subhadramma, W/o Late Ram Reddy,

r/o LIG, 2nd floor, 24, APHB Colony, Gadwal, Mahabubnagar District.

..... PETITIONER

AND

$ 1 The Commissioner Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.
3 Sri N. Venkat Ram Reddy, C/o Devender Reddy, Lakshmi

Venkateswara Automobiles, Near Old Bus Stand, Gadwal,

Mahabubnagar District.

.....RESPONDENTS

!For the petitioner … Mr. J. Prabhakar

^For the Respondent 1 … Mr. R. Thimma Reddy

For the Respondent 2 …G.P. for Municipal Administration

And Urban Development

For the Respondent 3 …Smt. G. JyothiKiran

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1997 SC 1732 (Paras 4 and 5)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION Nos.20951, 22933, 23679 & 24583 of 1999

WRIT PETITION No.20951 of 1999

Between:

1 G. Saibaba s/o Sri Thayanna, C/o Sri Saibaba General Stores,

Opp: Old Bus Stand, Gadwal, Mahabubnagar District.
2 G. Pratap Reddy s/o. Bal Reddy, Sub. Assistant, O/o Soil Conservation

(Agrl. Dept.) Gadwal, Mahabubnagar District.
3 K. Subbaiah s/o Venkataiah, r/o Eedigonipalle village, Gadwal Mandal,

Mahabubnagar District.
4 P. Narasimhulu s/o Kistaiah, APSEB, r/o. Gadwal,

Mahabubnagar District.

..... PETITIONERS

AND

1 The Commissioner Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.
3 The Director, Directorate of Town & Country Planning Govt. of A.P.,

Secretariat, Hyderabad.
R3 is impleaded as per Court order dt.13/3/2000 in WPMP 3199/2000.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue appropriate writ, order or direction particularly a Writ of Mandamus declaring the proceedings No. A.e./924/96-99, dated 10.8.99 issued by the Respondent No.1 as illegal, arbitrary and without jurisdiction and set aside the same and issue a consequential order to the Respondent No.1 to convey and register the plots Nos.

76, 125, 67 and 20 allotted to the Petitioners herein by receiving the balance amount as originally envisaged, (Rs.22,000/- in respect of LIG plots and Rs.26,325/- in respect of MIG plots) and pass such further or other orders.

Counsel for the Petitioners: MR.J.PRABHAKAR

Counsel for the Respondent No.1: MR. R. THIMMA REDDY

Counsel for the Respondent Nos.2 and 3: GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT

WRIT PETITION NO : 22933 of 1999

Between:

Smt. U. Sailaja w/o Srinivasa Rao, r/o MIG 36, Housing Board,

Gadwal, Post, Mahabubnagar District.

..... PETITIONER

AND

1 The Commissioner, Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Admn. Secretariat,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass appropriate writ, order or direction, particularly a writ of mandamus declaring the Proceedings No.A.E/924/96-99 dt.10-8-99 issued by respondent-1 as illegal, arbitrary and without jurisdiction and set aside the same and issue a consequential order to the respondent-1 to convey and register Plot No. LIG-80 in favour of petitioner by receiving the balance amount as originally envisaged as Rs.22,000/- and pass such further or other orders.

Counsel for the Petitioner: MRS.JANASWAMY SURYA KUMARI

Counsel for the Respondent No.1: MR. R. THIMMA REDDY

Counsel for the Respondent No.2: GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT

WRIT PETITION NO : 23679 of 1999

Between:

Smt. Venkata Narasamma w/o M. Hussainappa
r/o Chintalpet, Near SC Hotels, Gadwal, Mahabubnagar Dist.,

..... PETITIONER

AND

1 The Commissioner, Gadwal Municipality, Mahabubnagar District.
2 Govt. of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court MAY be pleased to issue appropriate writ, order or direction particularly a Writ of mandamus declaring the proceedings No. A.E./924/96-99, dated 10.8.99 issued by the Respondent No.1 as illegal, arbitrary and without jurisdiction and set aside the same and issue a consequential order to the Respondent No.1 to convey and register the plot No. MIG-16 allotted to the Petitioner herein by receiving the balance amount as originally envisaged (Rs.22,000/-) and pass such further or other orders.

Counsel for the Petitioner: MR.J.PRABHAKAR

Counsel for the Respondent No.1: MR. R. THIMMA REDDY

Counsel for the Respondent No.2: GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT

WRIT PETITION NO : 24583 of 1999

Between:

Smt. K. Subhadramma w/o Late Ram Reddy
r/o LIG, 2nd floor, 24, APHB Colony, Gadwal, Mahabubnagar District.

..... PETITIONER

AND

1 The Commissioner, Gadwal Municipality Mahabubnagar District.
2 Govt of A.P. rep. by Prl. Secretary, Municipal Administration

Department, Secretariat Hyderabad.
3 Sri N. Venkat Ram Reddy, C/o Devender Reddy, Lakshmi

Venkateswara Automobiles Near Old Bus Stand, Gadwal,

Mahabubnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or direction particularly a Writ of Mandamus declaring the proceedings No.A.E./924/96-99, dated 10.8.99 issued by the Respondent No.1 as illegal, arbitrary and without jurisdiction and set aside the auction in favour of

respondent No.3 in respect of plot No.,MIG-55 and issue a consequential order to the Respondent No.1 to convey and register the Plot No. MIG-55 in favour of the petitioner by receiving the balance amount as originally envisaged as Rs.29,550/- and pass such further or other orders.

Counsel for the Petitioners: MR.J.PRABHAKAR

Counsel for the Respondent No.1: MR. R. THIMMA REDDY

Counsel for the Respondent No.2: GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT

Counsel for the Respondent No.3: SMT.G.JYOTHI KIRAN

COMMON ORDER:

All the petitioners in these writ petitions are residents of Gadwal town. They are aggrieved by the proceedings of the first respondent dated 10.8.1999 wehreby and whereunder the allotment of LIG/MIG plots made in favour of the petitioners some time back were cancelled and a proposal to reauction the plots was mooted. As the background facts and the contentious issues are same, it is expedient to dispose of the writ petitions by this common order.

With a view to improve infrastructure and facilities and to check migration from rural areas, small and medium towns to bigger towns, the Central Government sponsored Integrated Development of Small and Medium Towns (IDSMT) Scheme in 6th Five year plan in 1979-'80. The Scheme envisages development of land with all facilities fit for construction of houses and also payment of grant by the Central Government. In pursuance thereof, the first respondent Municipality took up IDSMT Scheme in Gadwal town and invited applications from interested persons. All the petitioners applied for LIG/MIG plots. The Conditions of allotment are binding on applicants as well as Municipality. Condition No.5 reads as under:

5. a) The earnest Money Deposit, shall be remitted by a Demand Draft on any scheduled bank in favour of "Municipal Commissioner, Gadwal a/c IDSMT-EMD" The Demand Draft shall be crossed "A/c. Payee" and enclosed to the application. The earnest deposit will be refunded to the unsuccessful applicants within 30 days of announcement of allotment of plots. The Earnest Money Deposit will not carry any interest.

b) In the case of successful applicant, the earnest money deposit paid along with the application shall be adjusted as part of the initial 25% payment to be made by him.

c) The earnest money deposit once paid shall not be refunded under any circumstances except in cases of applicants who are not allotted the plots.

d) The Excess amount if any compensation payable to the land owners as per court judgment should be borne by the allottees proportionately as per the plots owned by him.

(emphasis supplied)

The important binding condition is that if the Municipality incurs additional expenditure by reason of payment of enhanced compensation as per a Court

judgment, the allottee(s) is/are required to proportionately pay the enhanced amount towards acquisition of land. Be that as it is, the Municipality conducted drawal of plots and all the petitioners were selected for allotment of their respective plots. Accordingly by intimation letter dated 19.6.1993, the petitioners were informed that plot is allotted to them and they were asked to pay 15% of the plot cost. As per the conditions of allotment, an allottee has to pay the balance amount in three quarterly instalments. The petitioners paid the requisite initial amount and took possession of the plots. As per the tentative cost fixed by the first respondent, the cost of LIG plot admeasuring 266 Sq. yards is Rs.29,332/- (Rupees Twenty nine thousand three hundred and thirty two only) whereas that of MIG plot admeasuring 350 Sq. yards is Rs.35,100/- (Thirty five thousand one hundred only) and HIG plot admeasuring 400 Sq. yards would cost Rs.38,098/- (Thirty eight thousand ninety eight only).

It appears the land owners, whose land was acquired for IDSMT Scheme, Gadwal, not satisfied with the amount of Rs.10,500/- per acre fixed by the Sub Collector, sought a reference in Award No.10 of 1986 under Section 18 of the Land Acquisition Act, 1894 (the Act, for brevity) to the Civil Court. The Court of Principal Senior Civil Judge, Gadwal by judgment dated 26.3.1996 in O.P. Nos.232 of 1994 enhanced the compensation to Rs.50/- (Rupees fifty only) per Sq. yard. The Acquiring Authority preferred an appeal to this Court and this Court by order dated 12.12.1996 fixed the market value at Rs.22.50 per Sq. yard. Special Leave Petition against the same was dismissed by the Supreme Court on 04.8.1997.

After the question of compensation was finally decided, the first respondent initiated steps for refixing cost of the land allotted to the petitioners and issued final notice to the petitioners in April 1998 calling upon them to pay the revised rate presumably taking into consideration the amount incurred for payment of enhanced compensation under the Act. The said final notice was followed by reminders but the petitioners did not pay the amount. They contend that the payment made by the first respondent is arbitrary and contrary to the conditions of allotment. According to the petitioners, as it is a centrally sponsored sceheme under which Municipality is paid grant, the Municipality cannot demand any other amounts incurred by it except the amount incurred towards enhanced compensation for land. As the petitioners did not pay the amount, the first respondent issued the notice of cancellation and reauction on 10.8.1998. It was also published in the local Newspapers on 15.8.1998 against which these writ petitions are filed.

In the counter affidavit filed by the Commissioner of Gadwal Municipality, it is stated that the Local Level Coordination Committee (LLCC) under the Chairmanship of the Joint Collector met on 06.4.1998 and examined the entire matter of compensation to land owners. After taking into consideration the enhanced compensation, the committee revised the price to Rs.143/- (Rupees One hundred and forty three only) per Sq. yard and the petitioners were directed to pay the said amount. In justification of the said fixation, the minutes of LLCC for implementation of IDSMT, Gadwal are also annexed to the counter affidavit. Para –4 deals with additional amounts to be borne by the allottees and it is necessary to extract the same.

4) The additional amounts to be borne in view of Court order are as below:

a) Higher Compensation : Rs.1,42,36,610=00

b) Interest on compensation for 6 months:Rs. 3,00,000=00

c) Court fee & Misc. charges : Rs. 2,50,000=00

d) Additional Developments-Electricity : Rs. 15,00,000=00

_____

Rs.1,62,86,610=00

_____

Total Area of plots : 1,13,722 Sq. yards

Additional Expenditure/Sq.yard : 143/Sq.yard

The learned Counsel for the petitioners while reiterating various grounds taken in the affidavit accompanying the writ petition vehemently contends that it was improper for the first respondent to include the cost towards additional development (electricity) while calculating the final cost of the land. He, however, does not dispute the liability of the petitioners to pay proportionate amounts towards enhanced compensation under the Act. **Per contra**, the learned Standing Counsel for Municipality submits that the cost incurred for providing electricity is a spot of the development cost, and therefore, the calculations made by the local level coordination committee, which are accepted by the Municipality, is justified. Strong reliance is placed by the learned Standing Counsel on conditions of allotment.

It appears that after the Supreme Court dismissed the S.L.P. on 12.12.1996, the first respondent initially issued notice in November 1998 calling upon the petitioners to pay the revised rate of plot as fixed by the Municipality. They were also informed that if the amount is not paid, the plot will be reauctioned forfeiting the amounts already paid. It is not denied before this Court that the final notice was followed by reminders. Therefore the submission that the petitioners had no opportunity cannot be accepted. The petitioners, no doubt, gave a reply objecting to fixation of revised rate of the plots on various grounds to which a reference is made supra. It is not known whether the representation given by the petitioners was before the coordination committee and whether that was considered. But the fact remains that while fixing the revised cost of the plot, LLCC took into consideration four components as seen from above. As per condition No.5 (d), every allottee is liable to pay proportionate excess amount payable to land owners as per Court judgment. Therefore, there cannot be any objection if the components of costs like higher compensation, interest on compensation for six months, and the court fee and miscellaneous charges are the basis for fixing the revised cost of the plot. But the fixation of the costs for additional development (electricity), is seriously objected to

placing reliance on the decision of the Supreme Court in **Haryana Urban Development Authority v. Ranjan**.

The facts of the case decided by the Supreme Court in Haryana UDA are almost similar to the facts of the case on hand. Clause (9) of the letter of allotment issued by Haryana UDA, as extracted in Para 4 of the judgment of the Supreme Court, reads as under:

> "The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent Authority under the Land Acquisition Act shall also be payable proportionately as determined by the authority. The additional price determined shall be paid within thirty days of its demand"

The condition 5 (d) of the conditions of allotment under IDSMT Scheme is also similar. While giving due importance to the clause, the Supreme Court while negativing the contention of the authority that it can include other costs in the fixation of costs laid down as under:

> The aforesaid clause unequivocally indicates that if there has been any enhancement in the cost of the land on account of award by the competent authority under the Land Acquisition Act then the said enhancement would be payable proportionately as determined by the authorities. **The aforesaid clause does not authorise the allotting authority to raise additional demand on account of any other escalation. It is well settled that the competent authority is entitled to demand the price as on the date of final letter of allotment,** Ex. P.11 has been found to be the letter of allotment which has not been assailed before us. Even though the appeal arises out of a civil suit and parties had laid evidence in the forums below and no evidence was laid indicating the enhancement of cost of land on account of any development work. Yet the appellant being a public authority, this Court had directed by Order dated 23-9-1996 to place materials to indicate any development effected to the plaintiffs' plot from the date of possession given to the plaintiffs and the resultant enhancement of the price. It was also indicated that the defendants-appellants should also indicate how many more cases of this type are pending. Pursuant to the aforesaid order a letter dated 16-1-1990 from the Chief Administrator, Haryana Development Authority to the Estate Officer, HUDA, Gurgaon has been filed whereunder the Chief Administrator had directed the Estate Officer to charge at the current rate of Rs. 560.60 per square meter while issuing the final allotment letter. The appellants have also produced a copy of the Resolution of the authority enhancing the price of the land to Rs. 560.60 per square metre. But these documents are no assistance to the appellants inasmuch as the final letter of allotment (Ex. P. 11) was dated 24-11-1989 much prior to the issuance of letter from the Chief Administrator to the Estate Officer dated 16-1-1990. That apart by order of this Court dated 23-9-1996 the appellant were called upon to place material, to indicate if any further development to the plaintiffs' land has been made from the date of possession given to them but no such materials have been placed before us. The so called Resolution alleged to have been passed by the authority enhancing the price of the land will not be applicable to the plaintiffs' plot in whose case the final letter of allotment had been issued on 24-11-1989 as per Ex.P.11.
>
> (emphasis supplied)

These matters were heard initially on 28.9.2004 and having regard to the decision of the Supreme Court in **Haryana UDA** (Supra), this Court directed the learned Standing Counsel for Municipality to produce the details of expenditure incurred towards providing electricity. Though the matter was adjourned once, no file is produced nor details are furnished to this Court. Therefore, following the judgment of the Supreme Court, this Court holds that no power vests in the first respondent to include any costs incurred by the Municipality pursuant to the allotment except the

costs incurred for paying the enhanced compensation under the Act. As LLCC did not consider this aspect and based on such decision of the committee the petitioners were asked to pay the amount, this Court further holds that the cancellation is bad in law. Liberty is given to the Municipality to recalculate the proportionate amount payable by the petitioners and give a final notice for payment of the amount as per revised cost of plots.

These writ petitions, with the above observations, are disposed of. There shall be no order as to costs.

_____

V.V.S. RAO, J

October 12, 2004.

YS

L.R. Copy be marked.

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1 The Commissioner, Gadwal Municipality, Mahabubnagar District.
2 The Principal Secretary, Municipal Administration Department,

Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Director, Directorate of Town & Country Planning,

Government of Andhra Pradesh, Secretariat, Hyderabad.

4 Two CCs to the Government Pleader for Municipal Administration

and Urban Development, High Court Buildings, Hyderabad (O.U.T)

5 8 LR copies.

6 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

8 2 CD copies.